IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 616 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No. : NO

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the Civil Judge? No. : NO

STATE OF GUJARAT

Versus

RAMESHCHANDRA DHIRAJLAL SHAH

Appearance:

MR BY MANKAD APP for Petitioners

MRS KETTY A MEHTA for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 10/03/2000

ORAL JUDGEMENT

This petition under Article 227 of the Constitution filed by the State of Gujarat, arises out of proceedings under Section 61A of the India Forest Act as introduced by the Gujarat Act 19 of 1983.

2. Respondent no. 1 is the truck owner and respondents no. 2 and 3 were driver and cleaner of the said truck at the relevant time. According to the petitioners, the truck bearing No.GTG 7416 was lying at the house of Kalpanaben Mohanlal at Ankleshwar Paper Mill on 23rd November, 1987 and was about to unload. The truck contained 1300 green bamboo palas and when the driver was asked about the forest pass, he produced the pass authorizing transportation of 700 green bamboo palas from Vyara to Anklshwar. Thus, the truck contained 600 green bamboo palas in excess without there being a forest pass. The said bamboo palas were fresh and therefore in respect thereof the First Information Report was lodged by the Range Forest Officer, Mobile Squad. The truck and forest produce were seized. Subsequently, the statement of these persons were recorded and show-cause notice was issued to the respondents u/s 61A and 61B of the Act. The Deputy Conservator of Forest, Rajpipla after making due inquiry and affording opportunity of hearing to the respondents, by his order dated 31st January, 1981 held that an offence u/s 26 (1) (f) of the Indian Forest Act was proved and he ordered the truck to be released on payment of the penalty of Rs. 500/- and he also ordered the green bamboo palas which had been seized to be confiscated.

Respondent no. 1 from whose godown green bamboo palas were loaded and respondent no. 2 who was truck cleaner filed an appeal in the Sessions Court at Surat (Criminal Appeal (Forest) Appeal No. 4 of 1991). The learned Sessions Judge, Surat by his judgment and order dated 14th November, 1991 allowed the appeal holding that bamboo palas which were made from bamboo chips were no longer forest produce and hence it could not be said that the appellant had committed any offence. He, therefore, by his judgment and order dated 14th November, 1991 allowed the appeal and set aside the order passed by the Deputy Conservator of Forests. The State of Gujarat has filed this petition challenging the said judgment and order of the learned Sessions Judge.

The learned Sessions Judge relied on the Division Bench judgment of this Court in the case of Fatesang Gimba Vasava And Ors. Vs. State of Gujarat, reported din 28 (1) GLR 219. The Division Bench in para 13 of the judgment has specifically observed that "since bamboo articles produced from bamboo-chips do not fall within the definition of 'forest produce', the appellant could not be said to be removing forest-produce within the meaning of Sec. 26(g) of the Act. We are, therefore, of the view that the appellant was not removing forest

produce when he transported supdas, palas and toplas (bamboo articles) out of forest area after purchasing from the Adivasis residing in the forest."

This view of the Division Bench has been approved by the Supreme Court in the case of Suresh Lohiya Vs. State of Maharashtra, reported in 1996 (10) SCC 397. In that case what was confiscated was bamboo mat. The question arose whether bamboo mat was forest produce as defined in the Act or not. The Bombay High Court had taken a different view from the Division Bench decision of this Court and held that the bamboo mat was forest produce within the meaning of the Act. However, the Supreme Court observed that the High Court had erred in taking the said view and held as under :

"We have given our considered though to the rival contentions. It appears to us that the High Court erred in taking the aforesaid view by referring to the definition of 'timber' inasmuch as we agree with Shri Bhatia that the second part of the definition does not take within its fold fashioned bamboo as that part is relatable to wood, and not tree. We have said so because the definition of tree includes even canes, and a cane cannot be taken as a wood, even if a tree could be. But then, the High Court has also referred to sub-clause (i) (supra) which speaks of produce of tree as well. As to this, submission of the appellant's counsel has been that when sub-clause (i) is read as a whole the same would clearly indicate that such produce of tree alone is contemplated which is a natural growth or product like flowers and fruits. This submission has force when the definition of forest-produce is read in its entirety which would show that the definition either includes nature's gifts like charcoal, mahua flowers or minerals. Wild animals of which sub-clause (iii) speaks of its also a God's gift and not man-made. Whenever the legislature wanted to include article produced with the aid of human labour, it has said so specifically as would appear from sub-clause (iv), as it speaks, apart from minerals etc. of "all products of mines or quarries."

The legislature having defined "forest produce", it is not permissible to us to read in the definition something which is not there. We

> are conscious of the fact that forest wealth is required to be preserved, but, it is not open to us to legislate, as what a Court can do in a matter like at hand is to iron out creases, it cannot weave a new texture. If there be any lacuna in the definition it is really for the legislature to take care of the same.

We may also state that according to us the view taken by the Gujarat High Court in Fatesang Case is correct, because though bamboo as a whole is forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from forest-produce having a distinct character. May it be stated that where a word or an expression is defined by the legislature, courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in Stroud's Judicial Dictionary regarding a 'produce' cannot be decisive. Therefore, where a product from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest-produce" as defined in Section 2 (4) of the Act, despite it being inclusive in nature. That bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us, and rightly.

It is clear in view of the said decision of the Supreme Court that bamboo palas which are made from bamboo chips cannot be held to be forest produce as defined in the Act. The learned Sessions Judge therefore cannot be said to be have committed any error of law in arriving at the conclusion that bamboo palas was not the forest produce.

Therefore, result is that this petition fails and is accordingly dismissed. Rule is discharged. Interim relief stands vacated.

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/JVSatwara/